No. 97-60

FILED
SEP 10 1997
CLERK

In The

Supreme Court of the United States

October Term, 1996

KENTUCKY RIGHT TO LIFE, INC.; KENTUCKY RIGHT TO LIFE POLITICAL ACTION COMMITTEE; ROBERT ZOELLER; and LORA ROBERTSON, Treasurer of Kentucky Right To Life Political Action Committee,

v. *Petitioners,*

DAVID STENGEL, as Commonwealth's Attorney for Jefferson County, Kentucky, and as a representative of the class of Commonwealth's Attorneys in the State of Kentucky; A.B. CHANDLER, II, as Attorney General of the State of Kentucky; JOSEPH H. TERRY, as Chairman of the Registry of Election Finance of the State of Kentucky; CAROLINE S. BRATT, as a member of the Registry of Election Finance; VICTOR B. MADDOX, as a member of the Registry of Election Finance; GEOFFREY C. RALSTON, as a member of the Registry of Election Finance; WILLIAM T. WARNER, as a member of the Registry of Election Finance; BRENDA W. WILLOUGHBY, as a member of the Registry of Election Finance; and BETTY JOE WINTERS, as a member of the Registry of Election Finance, all in their official capacities,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI OF KENTUCKY RIGHT TO LIFE, INC., KENTUCKY RIGHT TO LIFE POLITICAL ACTION COMMITTEE, ROBERT ZOELLER AND LORA ROBERTSON

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INTRODUCTION

This Court has never held that political action committees (hereafter "PACs") are so inherently corrupting that the State may single them out for adverse treatment and thereby effectively prohibit people from associating with them and with each other (let alone that it may do so without any evidence or legislative findings to support such treatment). The Respondents, however, (hereafter "Kentucky") strain to convince this Court that it has approved of such disparate treatment. Kentucky hangs its hat on *California Medical Ass'n v. Federal Election Commission*, 435 U.S. 182 (1981) (*CMA*), and *Buckley v. Valeo*, 424 U.S. 1 (1976). However, neither of these cases involved, much less approved of, an *aggregate* contribution limit *only for* PACs. *CMA* upheld a limit on contributions to a *single*, multicandidate PAC, while *Buckley* upheld an aggregate limit on *total* contributions.

Although this Court has never addressed this issue, Kentucky insists there is no need for it to do so because the analysis, if not the holdings, of these decisions support treating PACs differently to advance a prophylactic interest in preventing corruption. According to Kentucky, this Court's decisions also allow it to treat PACs this way without *any* evidence that doing so is necessary, due to their unique structures and purposes, whatever these unique structures and purposes might be (for Kentucky still is unable to say). The Petitioners (hereafter "KRL") will show that *CMA* and *Buckley* do not affirmatively answer the question of whether Kentucky may so discriminate against PACs. Further, *Federal Election Committee v. National Conservative Political Action Committee*, 470 U.S. 480 (1985) (*NCPAC*), and *Citizens Against Rent Control v. City Of Berkeley*, 454 U.S. 290 (1981), seem to answer this query negatively. Nevertheless, because *CMA* and *Buckley could* be read to stand for such a proposition (and the Sixth Circuit has in fact so read them), this Court should grant the petition to remove the tension between these decisions and *NCPAC* and *Citizens Against Rent Control*.

ARGUMENT

I. This Court Has Never Addressed Whether A State May Limit Aggregate Contributions Only To PACs, And Its Conflicting Decisions In This Area Raise The Question Of Whether It Is Constitutional To Do So.

Kentucky asserts that in upholding Ky. Rev. Stat. § 121.150(10), the Sixth Circuit followed *Buckley*. *Opposition* at 6. But *Buckley* upheld a $25,000 aggregate limit on *all* contributions on the grounds that a limit *of this magnitude* was "a quite modest restraint upon protected political activity." 424 U.S. at 38-39. A $1,500 aggregate limit only on PAC contributions, though, is *not* a "quite modest restraint on protected political activity."

Because Kentucky does not expressly limit individual contributions to PACs, the aggregate PAC contribution limit functions as the limit on individual contributions to PACs. *See* Ky. Rev. Stat. § 121.150(10). As a result, a person can make the maximum individual contribution of $1,500 to only one PAC. Thus, while Kentucky rather callously notes that the statute enables a person to contribute to the PACs of "his choice," *Opposition* at 7, n.22, this, in reality, is not much of a choice[1]: $1,500 is not a massive amount of money; indeed, in 1976 ("*Buckley*") dollars, it is only equal to $559.60. *Buckley* upheld a $25,000 – not a $559.50 – aggregate contribution limit.

Kentucky might complain that it is inappropriate to compare a limit on all contributions with a limit only on PAC contributions. This, however, raises another question: what is so *uniquely bad* about PACs that warrants singling them out for such adverse treatment? In addressing KRL's equal protection claim, Kentucky notes that the Court has approved of treating groups differently based upon their structures and purposes (it does not address KRL's associational claim on this basis).[2]

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[1] That the $1,500 aggregate contribution limit does not provide a meaningful choice indicates that it was not established by legislative findings or other evidence (*infra*).

[2] In its *equal protection section*, Kentucky argues that *Vote Choice v. DiStefano*, 4 F.3d 26 (1st Cir. 1993), does not conflict with the Sixth

Opposition at 27-28. And it asserts that Ky. Rev. Stat. § 121.150(10) is needed to prevent circumvention of its $1,000 contribution limit. *See* Ky. Rev. Stat. § 121.150(6). *Id.* at 28, n.80. But it is still unable to say *why* the structures and purposes of PACs are much more problematic than those of other groups.[3]

Kentucky argues that *CMA* supports singling-out PACs for such disparate treatment. *Id.* at 7. *CMA*, though, is inapposite for two reasons. First, it involved contribution limits to a *single* PAC, while Ky. Rev. Stat. § 121.150(10) limits *total* PAC contributions. There is no evidence or legislative findings that PACs are more corrupting than other groups and individuals,

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Circuit's decision because it is reasonable to conclude that PACs, but not candidates and political parties, could be used to evade its $1,000 contribution limit. *Opposition* at 29-30. *Vote Choice*, however, was premised on associational grounds. For the same reason that KRL may not be treated differently for purposes of equal protection, it may not be treated differently for purposes of freedom of association: such disparate treatment "does not serve the state's interest in combatting corruption because corruption can as easily spring from . . . contributions [that flow through candidates and political parties] as from contributions that flow through PACs." *Vote Choice*, 4 F.3d at 35; *see* note 3, *infra*. Because there is no reason to target PACs for adverse treatment, the Sixth Circuit's decision conflicts with *Vote Choice*. The Court should grant the petition to resolve this conflict.

[3] Kentucky argues that because Ky. Rev. Stat. § 121.150(10) "is designed to deter circumvention of the $1,000 limit on contributions to a single candidate," it makes no sense to have comparable restrictions for candidates and political parties, who, according to it, cannot "serve as conduits for evading limits on contributions to candidates." *Opposition* at 26. This is simply incorrect. A person could, for example, contribute $1,000 to Candidate X and Candidate Y, and then direct Candidate Y to transfer its $1,000 contribution to Candidate X, i.e., a candidate transfer. A person could just as easily contribute $1,000 to Candidate X and Political Party Y, and then direct Party Y to give its $1,000 contribution to Candidate X. In both cases, the $1,000 limit has been easily circumvented. The question remains then, what, *if anything*, is so unique about PACs that warrants targeting them, and only them, for such adverse treatment, and not, for example, candidates, political parties, and other groups.

thus warranting such severe regulation. Indeed, this Court has noted just the opposite: PACs are "designed expressly to participate in political debate [and] . . . are [thus] quite different from the traditional corporations organized for corporate gain." *NCPAC*, 470 U.S. at 500. To borrow from *NCPAC*:

> [e]ven were we to determine that the large pooling of financial resources by [a single PAC] did pose a potential for corruption or [its] appearance . . . [Ky. Rev. Stat. § 121.150(10)] is a fatally overbroad response to that evil. It is not limited to multimillion dollar war chests; its terms apply equally to [PACs] that [are trying to] solicit [a few hundred dollars]. . . .

Id. at 498.

Second, and more importantly, Kentucky has prohibited Mr. Zoeller from making *any* contributions to KRLPAC simply because he has contributed a total of $1,500 to other PACs. *CMA* does not stand for such a proposition; it does not support the "wholesale restriction of clearly protected conduct." *Id.* at 501. Indeed, "[t]he plurality in *CMA* emphasized in that case, however, that nothing in the statutory provision in question 'limits the amount an unincorporated association or any of its members may independently expend in order to advocate political views,' *but only the* ***amount*** it may contribute *to a [PAC]*." *Id.* at 494 (emphasis added) (quoting *CMA*, 453 U.S. at 195). While Ky. Rev. Stat. § 121.150(10) leaves Mr. Zoeller free to make independent expenditures, it is much more restrictive than the statute *CMA* upheld in that it drastically limits the groups with which he may associate.[4] The Court should grant

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[4] In *NCPAC*, this Court, for the third time, recognized that the *only* compelling interests for restricting campaign finances is preventing actual and apparent corruption that exists from large individual contributions to current and potential officeholders: "[w]e held in *Buckley* and reaffirmed in *Citizens Against Rent Control* that preventing corruption or the appearance are the only legitimate and compelling government interests thus far identified for restricting campaign finances." *NCPAC*, 470 U.S. at 496-497 (quoted by KRL, in full, Petition at 15). Kentucky, though, asserts there is a

the petition to determine whether a prophylactic interest in preventing corruption warrants so dramatically limiting the avenues of political expression and association.

Kentucky also argues that the Sixth Circuit followed *Buckley* in finding that Ky. Rev. Stat. § 121.150(10) is narrowly tailored to prevent circumvention of the $1,000 individual contribution limit. *Opposition* at 16-18. However, for the same reasons that the statute is not a "quite modest restraint" on protected political speech and association (*supra*), it is not narrowly tailored as a prophylactic measure. Moreover, this Court's more recent decisions indicate that wide prophylactic bans are not narrowly tailored, particularly when more precise measures are readily available.

Five years after *Buckley*, in *Citizens Against Rent Control*, this Court rejected the city's argument that a $250 contribution limit to PACs was needed as a prophylactic measure "to make known the identities of supporters and opponents of ballot measures," 454 U.S. at 298, because the city *directly* required contributors to committees to identify themselves. *Id.* In this regard, ten years after *Buckley*, in *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238, 265 (1986) (*MCFL*), the Court stated that "government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation."

Twenty years after *Buckley*, in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 116 S.Ct. 2309, 2328 (1996) (Thomas J., concurring in the judgment and dissenting in part), Justice Thomas, applying this rule from *MCFL*, discussed why contribution limits are not

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third – and more amorphous – compelling interest for restricting campaign finances: "preventing erosion of the public's confidence in the integrity of the political process." *Opposition* at 11. It then *concludes* that Ky. Rev. Stat. § 121.150(10) is narrowly tailored to advance it. It is not clear that there is such an interest or that the statute is narrowly tailored. If there is this interest, the decisions from which Kentucky derives it, *id.* at 14, would conflict with this Court's pronouncements in *NCPAC*. Removing this conflict is another reason to grant the petition.

narrowly tailored. He observed that simply because a few individuals might corrupt the political process by making large contributions, this does not warrant preventing many more individuals from making contributions that will not. *Id.* at 2329 (quoting Brief of Appellants in *Buckley v. Valeo*). Similarly, even if a few persons might use PACs to evade Kentucky's individual contribution limit, this does not mean that a $1,500 aggregate limit on all PAC contributions is narrowly tailored, particularly when Kentucky *directly* prohibits circumventing its individual contribution limits.

> That bribery laws are not completely effective in stamping out corruption is no justification for the conclusion that prophylactic controls on funding activity are narrowly tailored. . . . Similarly, that other modes of expression remain open to regulated individuals does not mean that a statute is the least restrictive means of addressing a particular social problem. A statute could, of course, be more restrictive than necessary while still leaving open some avenues for speech.

Id. In sum, this Court's more recent cases indicate that "[b]road prophylactic bans on . . . contributions are not designed with the precision required by the First Amendment because they sweep protected speech within their strictures." *Id.* "*Buckley's* rationale for the contrary conclusion" – the same rationale upon which Kentucky relies – "is faulty." *Id.* This Court should grant the petition to bring *Buckley* into conformance with *Citizens Against Rent Control* and *MCFL*.[5]

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[5] Kentucky asserts that in approving Ky. Rev. Stat. § 121.150(10) as a prophylactic measure, the Sixth Circuit followed *Buckley's* comments that such measures may prevent not only circumvention of individual contribution limits through earmarked contributions, but through "unearmarked contributions to [PACs] likely to contribute to that candidate." *Opposition* at 17 (quoting *Buckley*, 424 U.S. at 38-39). The Court, though, was discussing a $25,000 cap on *all* contributions that it felt was a "quite modest restraint upon protected political activity," and that prevented "massive amounts of money [from going] to a particular

Finally, Kentucky asserts that under *Singleton v. Wulff*, 428 U.S. 106 (1976), KRL may not point out that Ky. Rev. Stat. § 121.150(10) is not narrowly tailored as a prophylactic measure in light of its direct prohibitions against circumvention (*see* Ky. Rev. Stat. §§ 121.150(8) & (9)), because "KRL did not argue this issue [below]." *Opposition* at 15-16. *Singleton* held that a party was required to raise issues, 428 U.S. at 120, not every conceivable *argument* and *counterargument* in support of an issue. Here, KRL is not raising an issue for the first time; it is not, as was the case in *Singleton*, arguing the merits when standing had always been at issue. *Id.* Rather, it is only listing another reason *why* an issue – whether the statute is narrowly tailored – should be decided in its favor. Because KRL has raised this issue, the Court should avoid Kentucky's smoke screen and proceed on course to the merits.

Assuming a party is required to present every conceivable argument in support of an issue, this is a discretionary rule that is used to prevent prejudice, such as when a party is unable to present evidence or argument. *Id.* at 120-121. Here, Kentucky has not suffered any prejudice, nor has it even argued any. KRL's challenge to Ky. Rev. Stat. § 121.150(10) is a preenforcement, facial challenge. It was decided on an agreed record (discussed *infra*) and involves questions of law. Kentucky had the opportunity to present whatever evidence it wanted, and at all times, including in this Court, it has been able to present all of its legal arguments. Indeed, Kentucky addressed, on the merits, KRL's argument that Ky. Rev. Stat. § 121.150(10) is not narrowly tailored because of more precise means. *Opposition* at 16-18. This case is thus a far cry from *Singleton*, where a party had never filed any pleadings on the merits, and in fact, "ha[d] never been heard in any way on the merits. . . . " 428 U.S. at 120.

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candidate. . . . " *Id.* A $1,500 aggregate limit on PAC contributions today is a much greater burden on First Amendment rights than a $25,000 cap on all contributions in 1976, and it is an overbroad means of preventing "massive amounts" of money from going to a candidate.

II. Kentucky Misreads The Case Law On The Evidentiary Requirements For Restricting PACs' Rights, And If It Has Not, There Is Confusion On This Issue, And The Petition Should Be Granted To Eliminate It.

Kentucky asserts that once an interest is held to be compelling *as a matter of law,* states may infringe upon First Amendment rights in future cases without ever demonstrating that the interest is implicated *as a matter of fact*, *Opposition* at 19; the Court will simply presume that the interest is implicated and that the means are narrowly tailored. *Id.* at 19-23.[6] Kentucky argues that *Turner Broadcasting System, Inc. v. Federal Communications Commission,* 114 S.Ct. 2445, 2470-2472 (1994) (plurality opinion), and *United States v. National Treasury Employees Union,* 513 U.S. 454 (1995), support its assertion because there were issues of first impression in these cases. *Opposition* at 21-22. The Court, however, never *said* that it was requiring the government to justify the regulations with evidence or legislative findings only because they involved "new" topics. Thus, if these cases stand for this proposition, the Court should grant the petition to clarify this point.[7]

Kentucky also asserts that the Sixth Circuit's decision does not conflict with *Carver v. Nixon,* 72 F.3d 633 (8th Cir.

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[6] Assuming this is the rule, the Sixth Circuit still failed to follow precedent because this Court has never upheld an aggregate limit *only* on contributions to PACs. Thus, Kentucky was required to show that the restriction was necessary and that it was narrowly tailored.

[7] Kentucky also cites *Florida Bar v. Went For It,* 115 S.Ct. 2371 (1995). *Id.* at 20. However, the portion upon which it relies only says that *there* the State had met its evidentiary burden. *After making this showing*, the Court held that the "empirical data" with which the state came forth did not have to be "accompanied by a surfeit of background information." *Id.* at 2378. Such *additional* evidence was not required. Unlike the Sixth Circuit, *Went For It* did not hold that the state need not offer *any* evidence to justify restricting First Amendment rights. Indeed, although *Went For It* involved commercial speech – not political speech and association like this case – and thus was subject to lesser scrutiny, the Court still required the State to demonstrate the need for the restriction.

1995), because, since *Carver* involved a referendum, it did not address whether courts should defer to a legislature as they do to Congress. *Opposition* at 23-24. For two reasons, this argument is a straw man. First, and as *Carver* noted, 72 F.3d at 644, while courts may defer to Congress, they still require it to produce *some* evidence to justify restricting First Amendment rights.[8] Here, Kentucky did not produce *any* evidence to justify discriminating against PACs. Second, *Carver* conflicts with this case because there the Eighth Circuit *broadly* said that a state must justify restricting First Amendment rights. Indeed, because *Carver* also noted that a legislature, no more so than the people, may violate the Constitution, *id.*, it is difficult to believe – particularly in light of its broad statements – that the Eighth Circuit would hold the opposite for legislation.[9]

Finally, Kentucky again attempts to avoid the merits by alleging that KRL somehow duped it into not putting forth any evidence when the district court, *sua sponte,* consolidated KRL's motion for a preliminary injunction with a trial. *Opposition* at 18-19. Kentucky essentially argues that KRL had a duty to advise Kentucky that it should support the statute with

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[8] *Turner Broadcasting,* for example, said (in a passage omitted by Kentucky) that while "Congress' predictive judgments are entitled to substantial deference does not mean, however, that they are insulated altogether from meaningful judicial review . . . [and particularly when First Amendment rights are at issue, the Court's job] is to assure that, in formulating its judgments, Congress has drawn reasonable inferences based on substantial evidence." *Turner,* 114 S.Ct. at 2471.

[9] *Rosenstiel v. Rodriguez,* 101 F.3d 1544 (8th Cir. 1996), *Opposition* at 24-25, involved public financing of speech. A *subsidy* of speech, not a burden on speech, was thus at issue. 101 F.3d at 1553. Because in *Rosenstiel* there was no burden on First Amendment rights, *Regan v. Taxation With Representation Of Washington,* 461 U.S. 540, 546 (1983), it is a red herring for Kentucky to note that the Eighth Circuit did not require the state to justify this *non*-burden. Further, the portion of *Rosenstiel* that Kentucky cites is *dictum.* The Court had already held "that the challenged provisions do not burden First Amendment rights is a sufficient basis to affirm the judgment." 101 F.3d at 1553. Thus, *Rosensteil* does not remove the conflict between *Carver* and the Sixth Circuit.

legislative findings or other evidence and that because KRL did not do so, it may not point out Kentucky's failure to put forth such facts. *Id.* The first assertion is untrue as a matter of fact; the second is astounding as a matter of law.

First, KRL *moved* for consolidation two weeks before the preliminary injunction hearing, Reply App. 1, and Kentucky did not object to it. *Id.* at 6. The district court did **not** "spring" consolidation on it. Further, *KRL* did not "advise[ ] the District Court 'that there was no need for testimony or anything in the record' and that the material facts were agreed to by the parties." *Opposition* at 18. Kentucky is quoting the *District Court*. Supp. App. 2. KRL responded to the court's query, "That's our understanding, Your Honor." *Id.* KRL was thus simply saying it understood that neither side was going to introduce evidence at the hearing or dispute the facts that were on already record. In fact, Kentucky agreed to this. *Id.* (stating "I think that's correct."). Second, KRL does not have the duty, much less the ability, to conduct Kentucky's case. It is not privy to Kentucky's strategy or to what, if any, evidence is available. KRL did not dupe Kentucky. To use as a litigation tactic the suggestion that it did, and in the process imply that KRL violated some duty, is, to say the least, unwarranted.

CONCLUSION

For these reasons, and those the petition for writ of certiorari sets forth, the Court should grant the petition.

Dated: September 9, 1997

Respectfully submitted,

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APPENDIX

PETITIONERS' REPLY APPENDIX

Plaintiffs' Verified Motion For Preliminary Injunction And Consolidation With Trial On Merits, dated October 2, 1995 ..... App. 1

Defendants' Response To Plaintiffs' Verified Motion For Consolidation With Trial On Merits, dated October 16, 1995 ..... App. 6

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

KENTUCKY RIGHT TO LIFE, INC., et al., *Plaintiffs,*	)	
v.	)	**CAUSE NO. 3:95CV-582-H**
NICHOLAS KING, in his official capacity as Commonwealth Attorney for Jefferson County, Kentucky, and as a representative of the class of Commonwealth Attorneys in the State of Kentucky, CHRIS GORMAN, et al., *Defendants.*	)	

VERIFIED MOTION FOR PRELIMINARY INJUNCTION AND CONSOLIDATION WITH TRIAL ON MERITS

(Filed Oct. 2, 1995)

Come the Plaintiffs, Kentucky Right to Life, Inc., Kentucky Right to Life Political Action Committee (KRLPAC), Robert Zoeller, and Lora Robertson, Treasurer of KRLPAC, by counsel, and pursuant to Federal Rule of Civil Procedure 65(a)(2), respectfully move the Court to preliminary enjoin the Defendants from enforcing KRS §§ 121.025, 121.035(2), 121.190(1), 121.180(6)(a), 121.180(6)(b), 121.150(6), 121.150(10), 121A.030(4), and 121A.050(1), and to consolidate the hearing on the Plaintiffs' Motion for Preliminary Injunction with the trial on

the merits of Plaintiffs' Verified Complaint. In support of their motion, the Plaintiffs state as follows:

1. The Plaintiffs have filed their Verified Complaint for declaratory judgment and preliminary and permanent injunctive relief.

2. Contemporaneous with the instant motion for preliminary injunctive relief, the Plaintiffs have filed their memorandum in support thereof. In said motion, the Plaintiffs request the Court to preliminarily enjoin the aforementioned provisions of the Kentucky election laws in Chapter 121 of the "Campaign Finance Regulations," KRS § 121.010 et seq., and Chapter 121A of the "Public Financing Campaign Act," KRS § 121A.005 et seq., on the ground that they violate the First and Fourteenth Amendments to the United States Constitution by unduly impinging upon protected political speech and associational rights and by denying the Plaintiffs the equal protection of the laws.

3. As discussed in the accompanying brief, the Plaintiffs have suffered, and will continue to suffer, the irreparable harm of their First Amendment rights if the aforementioned provisions are not preliminarily enjoined.

4. Furthermore, as discussed in the accompanying brief, the Plaintiffs will likely succeed on their claims, and their challenges to the aforementioned provisions raise serious questions going to the merits of their claims.

5. The Plaintiffs are willing to provide security as the Court deems proper; however, because of the

unlawfulness of the provisions at issue, and the concomitant likelihood that the Plaintiffs will succeed on their claims, such security, if required, should be nominal.

6. Because the evidence submitted at trial or on summary judgment will be identical to the evidence presented at the hearing on the Plaintiffs' Motion for Preliminary Injunction, consolidating this hearing with a trial on the merits will save judicial resources.

WHEREFORE, the Plaintiffs respectfully move the Court as follows:

a. To set a hearing on Plaintiffs' Motion for Preliminary Injunction at the earliest possible date and to consolidate said hearing with a trial on the merits of Plaintiffs' Verified Complaint; and

b. Following such a hearing and trial, to issue an order preliminarily or permanently enjoining: KRS §§ 121.025, 121.035(2), 121.190(1), 121.180(6)(a), 121.180(6)(b), 121.150(6), 121.150(10), 121A.030(4), and 121A.050(1).

VERIFICATION

I affirm under the penalties for perjury that the foregoing statements are true. Dated: September 30, 1995.

/s/ John K. Abegg
John K. Abegg

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 2, 1995, a true and complete copy of the foregoing was served upon the Defendants by depositing a copy of the same in the United States Mail, first class, postage pre-paid, at the following address:

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/s/ Terry E. Fox
Terry E. Fox

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

KENTUCKY RIGHT TO LIFE, et al. Plaintiffs v. NICHOLAS KING, et al. Defendants	)	CIVIL ACTION NO. 3:95CV582-H

DEFENDANTS' RESPONSE TO PLAINTIFFS' VERIFIED MOTION FOR CONSOLIDATION WITH TRIAL ON MERITS

(Filed Oct. 16, 1995)

The Defendants, Commonwealth Attorney Nicholas King, Attorney General Chris Gorman and Registry of Election Finance members Joseph H. Terry, Caroline S. Bratt, Victor B. Maddox, Geoffrey C. Ralston, William T. Warner, Brenda W. Willoughby and Betty Joe Winters, (collectively "defendants"), hereby respond to Plaintiffs' Verified Motion for Consolidation With Trial on Merits. Because this action presents only facial challenges to the constitutionality of the election statutes, the questions presented to this Court are purely matters of law and, therefore, can adequately be decided by the Court on submission of briefs by the parties.

Defendants, therefore, do no [sic] object to Plaintiffs' Verified Motion For Consolidation With Trial on Merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of this Response to Plaintiffs' Verified Motion for Consolidation With Trial on Merits was served upon Plaintiffs by facsimile and by mailing a copy of same, United States mail, postage prepaid, to the lead counsel of record, James Bopp, Jr. and John K. Abegg, Bopp, Coleson & Bostrom, 2 Foulkes Square, 401 Ohio Street, P.O. Box 8100, Terre Haute, IN 47808-8100; and by hand delivery to local counsel, Terry

E. Fox, Suite 490, Starks Bld., Louisville, KY 40202 this 16th day of October 1995.

/s/ Jacquelyn P. Elmore
One of Counsel for
Defendants